Reg. No. GR/RNP/GOA/32

RNI No. GOAENG/2002/6410

Panaji, 24th January, 2008 (Magha 4, 1929)

SERIES II No. 43

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

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Notification

No. 28/18/2007-LAB/860

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 4-6-2007 in reference No. LCC/14/2001 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 22nd August, 2007.

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IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI-GOA

(Before Shri Dilip K. Gaikwad, Presiding Officer)

LCC/No. 14/2001

Shri Vasudev Anant Pednekar,
Behind House of Mr. Jackson Rodrigues,
Shiro Carmona,
Salcete, Goa. ... Applicant/Party-I

v/s

M/s. Prestige Holiday Resorts Ltd.,
Hattimahal, Cavellosim,
Mobor,
Salcete, Goa. ... Opponent/Party-II

Applicant/Party I-Represented by Adv. Sharad Chodnekar.

Opponent/Party II- Represented by Adv. M. S. Bandodkar and S. K. Manjarekar.

JUDGEMENT

(Delivered on this 4th day of June, 2007)

This is an application instituted under Section 33-C(2) of the Industrial Disputes Act, 1947 (in short the said Act, 1947) to receive money and benefit which is capable of being computed in terms of money due to the applicant from the opponent.

1. Facts giving rise to the present application, stated in brief are as follows:

The applicant was working as a Supervisor-cum-Store Keeper under employment of the opponent w.e.f. 8-5-1996. The opponent terminated service of the applicant w.e.f. 1-12-2000 by its letter dated 31-10-2000. The opponent did not pay to the applicant retrenchment compensation, gratuity, bonus, leave salary and overtime wages admissible as per provisions of the said Act, 1947, the Payment of Gratuity Act, 1972, Payment of Bonus Act, 1965, and of Minimum Wages Act, 1948. Therefore, he instituted the present application on 11-4-2001.

2. The applicant claimed Rs. 15,000/- as retrenchment compensation, Rs. 10,000/- as gratuity amount for a period of four years @ 15 days average salary per year, Rs. 17,500/- as bonus for a period from the year 1997 till the year 2000, Rs. 3,846/- as a leave salary of twenty days, and Rs. 11,730.30 ps. as overtime wages of 61 days till the month of November, 2000, coming to total of Rs. 58,076.30 ps. as set out in annexure attached to the application. He has received Rs. 16,000/- under protest on 30-11-2000. He has claimed the balance amount of Rs. 42,076.30 ps. under this application.

3. The applicant after institution of the application amended the application stating that he has received Rs. 4,615/- as gratuity on 30-11-2000. After deduction of this amount of Rs. 4,715/-, he has claimed a sum of Rs. 36,691.35 ps. from the opponent.

4. In response to notice, the applicant appeared in the court and resisted the claim of applicant by filing its written statement on 17-6-2001 at Exb. 5. It appears from the written statement, the applicant is not entitled to money and/or benefit which is capable of being computed in terms of money. Such claim is not permissible under Section 33-C(2) of the said Act, 1947. The applicant who was doing supervisory job, was getting wages/salary more than Rs. 1,600/- per month. The applicant is not a workman within meaning of Section 2(s) of the said Act, 1947. Therefore, the application which is instituted under Section 33-C (2) of the said Act, 1947 is not maintainable. The opponent is a project company. The applicant was appointed under letter dated 29-4-1996 on salary/wages of Rs. 3,000/- per month. In addition, the applicant was entitled to get Rs. 600/- per month as reimbursement for accommodation. The opponent completed the project. Therefore, it has retrenched all its workmen by giving one month's notice on 31-10-2000. All the dues which were payable to the applicant are paid to him on 30-11-2000. Total of the dues paid to the applicant is Rs. 16,000/-. It is the full and final settlement. The applicant had no leave on his credit. Provisions of the said Act, 1947, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965, and of the Payment of Gratuity Act, 1972, are not applicable. The applicant has not done overtime work. Claim made out by the applicant is unfounded. He is not entitled to any of the amounts claimed in the application. Therefore, the opponent has prayed for dismissal of the application.

5. The applicant filed rejoinder on 24-7-2001. It is at Exb. 6. According to him, he is workman within the meaning of Section 2(s) of the said Act, 1947. He was mainly doing clerical work. The opponent retrenched him without following provisions of the said Act, 1947. He is entitled to receive all the amounts except that of gratuity as claimed in the application. On basis of the provisions contained in the said Act, 1947, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965, and of the Payment of the Gratuity Act, 1972. The application which is instituted under Section 33-C(2) of the said Act, 1947 is maintainable.

6. On basis of the pleadings of the parties, the then learned Presiding Officer, framed issues at Exb. 11. The issues are recast by me at Exb. 19. The recast issues are as follows:

1. Whether the application is maintainable?
2. Whether a sum of Rs. 15,000/- is due as a retrenchment compensation to the applicant from the opponent?
3. Whether the applicant is entitled to claim gratuity?
4. Whether a sum of Rs. 10,000/- is due as gratuity to the applicant from the opponent?
5. Whether a sum of Rs. 17,500/- is due as bonus to the applicant from opponent?
6. Whether a sum of Rs. 3,846/- is due as leave salary to the applicant from opponent?
7. Whether the applicant has done overtime work of 61 days till the month of November, 2000?
8. Whether a sum of Rs. 11,730.30 ps. is due as overtime wages to the applicant from opponent?
9. Whether the applicant is entitled to receive balance amount of Rs. 36,691.30 ps.?
10. What order?

7. My findings on the above issues are as follows:-

Issue No. 1: Maintainable only in respect of claim for retrenchment compensation.

Issue No. 2: A sum of 6,500/- is due as retrenchment compensation.

Issue No. 3: Does not survive.

Issue No. 4: Does not survive.

Issue No. 5: Does not survive.

Issue No. 6: Does not survive.

Issue No. 7: In negative.

Issue No. 8: In negative.

Issue No. 9: Entitled to balance amount of Rs. 6,500/- as retrenchment Compensation.

Issue No. 10: The application is partly granted.

REASONS

8. *Issue No. 1:* Admittedly, the applicant was appointed as Supervisor-cum-Store Keeper by the opponent under its appointment letter dated 29-4-1996. Xerox copy of the appointment letter is at Exb. A-1. The applicant joined his duty as the Supervisor-cum-Store Keeper w.e.f. 8-5-1996. His services are terminated by the opponent w.e.f. 1-11-2000 by giving one month's notice dated 31-10-2000. Xerox copy of the notice is at Exb. A-2. The termination is on the ground that the project "Haathi Mahal" was almost completed. Before issuing the notice dated 31-10-2000, the opponent paid Rs. 6,000/- as retrenchment compensation, Rs. 4,615/- as gratuity, Rs. 5,000/- as bonus and additional amount of Rs. 385/- coming to total of Rs. 16,000/- under cheque of the same date to the applicant.

9. By presenting this application, the applicant has claimed retrenchment compensation, gratuity, bonus, leave salary and overtime wages as set out in annexure attached to the application, on basis of provisions contained in the said Act, 1947, the Minimum Wages Act, 1948, Payment of Bonus Act, 1965 and the Payment of Gratuity Act, 1972. Learned advocate appearing on behalf of the applicant argued before me that as per provisions contained in Section 33 C (2) of the said Act, 1947, the applicant who is workman is entitled to receive from the employer i.e. the opponent any money

or any benefit which is capable of being computed in terms of money and which is due from the opponent. The amounts claimed by the applicant from the opponent are money and benefit which is capable of being computed in terms of money. Therefore, according to him, the application which is instituted under Section 33 C(2) of the said Act, 1947 is perfectly maintainable. In support of his argument he relied upon decision given by the Hon'ble High Court of Andhra Pradesh in case of *Ramesh Watch Co., Secunderabad, Petitioner, v/s Addl. Industrial Tribunal-cum-Addl. Labour Court, Hyderabad & Anr. Respondents, reported in 2005 III CLR 649.* The Hon'ble High Court held in this reported case that burden lies upon workman initially, to prove that his services were terminated and that no adverse inference can be drawn in favour of workman for non production of relevant records by the employer. In the present case, it is not in dispute, on the contrary, it is admitted fact that the workman i.e. the applicant is terminated from services w.e.f. 1-12-2000. Question of proving termination of service does not arise. I, therefore, with respect, hold that, the decision relied upon by the learned advocate of the applicant is not useful to decide the question which relates to maintainability of the present application.

10. The learned advocate of the applicant, to prove that the instant application is maintainable, further, he relied upon decision given by the Hon'ble High Court of Judicature at Bombay in case of *Ambika Tobacco Co., Gondia and Labour Court, Nagpur and others, reported in 1968 (II) LLJ 353.* In this reported case, there were in all forty-three workers. Each of them individually claimed difference between wages paid and the minimum wages payable, by filing application under Section 33-C(2) of the Industrial Disputes Act, 1947. The Hon'ble High Court pleased to hold that, such claim is within ambit of the power of the Labour Court under Section 33 C(2) of the Industrial Disputes Act. Facts of this reported case are also different from that of the present one. With respect, I am of the opinion that, the decision relied upon by the learned advocate is not applicable to the present case.

11. Relevant portion of Section 2(s) of the said Act, 1947 lays down that,—

> *"Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute"*

The applicant was appointed as the Supervisor-cum--Stenographer under employment of the opponent. Therefore, the applicant is a workman as defined under Section 2(s) of the said Act, 1947. Defence taken by the opponent in its written statement (Exb. 5) that the applicant is not a workman, is devoid of merits.

12. The dispute is between the employer and employee i.e. between the opponent and applicant respectively, and it is in connection with employment. Therefore, it is the industrial dispute between the parties as defined under Section 2(k) of the said Act, 1947.

13. Learned advocate of opponent challenged maintainability of the application by pointing out in his argument that the opponent disputed all the amounts claimed by the applicant. The application under Section 33-C (2) of the said Act, 1947 is in the nature of execution proceeding. There is no adjudication as to whether the amounts claimed by the applicant are due to the applicant from the opponent. The applicant is not entitled to receive the amounts which are not adjudicated. Therefore, according to him, the application which is instituted under Section 33 C(2) of the said Act, 1947 is not maintainable. To substantiate his argument, he relied upon decision given by the Hon'ble Supreme Court of India in case of *Municipal Corporation of Delhi v/s Ganesh Razak and anr, Reported in 1995 I CLR 170.* In this reported case, respondents were daily rated/casual workers of appellant Municipal Council. They claimed that they do the same kind of work as regular employees and as such they are entitled to same pay as that of regular employees. They filed application under Section 33 C(2) of the said Act, 1947 for computation of arrears of their wages @ at which wages are paid to regular employees. Labour Court passed award in their favour. The Hon'ble High Court of Delhi rejected contention that the claim under Section 33-C(2) was not maintainable. Therefore, the Municipal Corporation approached the Hon'ble Supreme Court by way of appeal. Claim of the workman was neither adjudicated nor recognized by the employer in any award or settlement. Real question which was before the Hon'ble Supreme Court was whether in these circumstances without a prior adjudication or recognition of the disputed claim of the workmen to be paid at the same rate as the regular employees, proceedings for computation of the arrears of wages claimed by them on that basis are maintainable under Section 33-C(2) of the Act. The Hon'ble Supreme Court held that:

> "the application under Section 33-C (2) is not maintainable in as much as the claim of respondents-workmen, who were all daily rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach."

14. It will not be out of way, if I add that, each case is governed by its own facts and circumstances. Facts

of the above reported case are totally different from that of the present one. With respect, I am of the opinion that, the decision relied upon by the learned advocate is not applicable to the present case.

15. One more decision relied upon by learned advocate of opponent is from the case of *Gujrat Water Supply and Sewarage Board and another, appellants v/s Ketanbhai Dinkarray Pandya, Amreli, Respondent, reported in 2003 III CLR 316.* In this reported case, the employer-Board had raised bonafide dispute before the Labour Court regarding the claim of overtime wages of the workmen. The Hon'ble High Court of Gujrat held that the claim should have been first adjudicated either by the competent authority under the Minimum Wages Act or by the Labour Court in reference proceedings under Section 10 of the Industrial Disputes Act, and that, in absence of it all the recovery applications directly filed before the Labour Court by the respondents-Workmen under Section 33-C(2) of the Industrial Disputes Act, were not maintainable. Relying upon this decision learned advocate of opponent further argued that in the present case also there is no prior adjudication regarding claim for overtime wages, therefore, according to him, the application so far it relates to the claim for overtime wages is not maintainable.

16. Relevant portion of Section 33-C(2) of the said Act, 1947, lays down that:

> "Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in the terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government (within a period not exceeding three months)."

17. From the above provision, it becomes apparent that, entitlement to receive any money or any benefit which is capable of being computed in terms of money is important. In the present case, the applicant has claimed retrenchment compensation, gratuity, bonus, leave salary and overtime wages. The applicant is entitled to retrenchment compensation under Section 25(F) of the said Act, 1947, on his termination from the service. Therefore, the application in respect of the claim for retrenchment compensation is maintainable.

18. The applicant by filing application (Exb. 7) has withdrawn the claim of gratuity amount. The application is allowed on 24-7-2001. Since the claim for the gratuity amount is withdrawn, I hold that, question regarding maintainability of the application under Section 33-C(2) of the said Act, 1947 in respect of the claim for gratuity amount does not survive.

19. The opponent has produced xerox copies of wage register for period comprising from June, 2000 to November, 2000 at Exb. O-3, colly. The xerox copies speak that there were total thirteen employees including the applicant under employment of the opponent. The Payment of Bonus Act, 1965 is applicable to every factory and every other establishment in which twenty or more persons are employed on any day during an accounting year. The opponent is not a factory. It comes under other establishment. Total strength of employees working under the opponent was less than twenty. I, therefore, agree with submission made by learned advocate of the opponent that the Payment of Bonus Act, 1965 is not applicable to the opponent.

20. Section 2(13) of the Payment of Bonus Act, 1965 defines that,—

> "Employee" means any person (other than an apprentice) employed on a salary or wage not exceeding (rupees three thousand five hundred) per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied."

21. Xerox copies of wage register, alluded supra, further show that, the applicant was getting salary or wages @ Rs. 5,000/- per month. This salary or wages is more than the ceiling prescribed by Section 2(13). It follows that the applicant does not come within the scope of "employee" as defined by Section 2(13) of the said Act, 1965. Therefore, and since the Payment of Bonus Act, 1965 is not applicable to the opponent. I, hold that, the applicant is not entitled to the bonus.

22. Learned advocate of the applicant argued that the opponent has paid a sum of Rs. 16,000/- including bonus Rs. 5,000/- under cheque dated 30-11-2000. If, at all the applicant was not entitled to bonus there was no reason for the opponent to pay the bonus to the applicant. The very fact that the opponent has paid the bonus, goes to show that the opponent is entitled to the bonus. R. B. Patel who was Account's Executive and who is examined for and on behalf of the opponent at Exb. 15 explained in his evidence that though the amount of Rs. 5,000/- is paid as bonus, in fact, this amount is paid as a gift to the applicant on completion of the project. Since the letter dated 30-11-2000 (Exb. O-2) speaks that the amount of Rs. 5,000/- is paid by way of bonus, the evidence of R. B. Patel cannot be accepted. As the provisions of the Payment of Bonus Act, 1965, are not applicable and the applicant is not covered by the definition of "employee" under the said Act, 1947, I, hold that, the applicant cannot claim the bonus as of right. I, do not agree with argument advanced by learned advocate of the applicant. The opponent has raised a bonafide dispute regarding the claim of bonus. Such claim should be first adjudicated by making reference as Industrial Dispute as provided under Section 22 of the Payment of Bonus Act, 1965. In absence of such adjudication, I hold that, the application for

the claim of bonus under Section 33-C(2) of the said Act, is not maintainable.

23. The applicant has claimed leave salary Rs. 3,846/- on the ground that leave of twenty days was on his credit. There is no evidence except his interested words to prove that the leave of twenty days was on his credit at the time of termination. Learned advocate appearing on his behalf argued that, the leave register is with the opponent. It is not possible for the applicant to produce such type of documentary evidence which is in possession of opposite party. Since, the opponent did not produce the leave register, he urged to draw adverse inference against the opponent. It is true that, the leave register must be in possession or custody of the opponent, and therefore, the opponent was in better position to produce the said register in the court to bring reality on the record. Nothing such has been done by the opponent. However, it should be remembered that there was no application by the applicant to the Tribunal for direction to the opponent to produce the said register in the court. In absence of such step by the applicant, it will not be proper to draw adverse inference against the opponent as urged by the applicant's learned advocate.

24. In response to applicant's letter dated 27-11-2000 the opponent sent him reply on 30-11-2000. Xerox copy of the reply is at Exb. O-1. The opponent has informed under this reply to the applicant, the basis on which earned leave, sick leave and casual leave of the applicant is computed. The opponent sent along with the reply leave record of the applicant for the current year i.e. the year 2000. The applicant admitted in his cross--examination that, he had received leave record along with the reply. Learned advocate of the opponent pointed out in his argument there was not a single leave on credit of the applicant at the time of termination of the service and therefore, the applicant did not produce the leave record in the court. This leads to adverse inference against the applicant. Therefore, according to him, the applicant is not entitled to the leave salary.

25. The applicant did not explain as to why he did not produce the leave account in the court. The best evidence which was possible to be produced and which was available is not produced by him.

Therefore, an adverse inference will have to be drawn against him. I agree with argument advanced by learned advocate of the opponent. The opponent has raised bonafide dispute regarding claim of the leave salary of the applicant. There should be prior adjudication of such claim. I, hold that, in absence of such adjudication, the application in hand, which is in the nature of recovery application is not maintainable.

26. Though it has come in evidence of the applicant that he has done overtime work of 61 days, it reveals that his evidence is away from the truth. He has produced details in his own handwriting regarding the overtime work of 61 days done by him during the period from September, 1999 to October, 2000. It is the xerox copy of the details (Exb. A-8). He has prepared the details, as admitted by him in his cross examination, only for the purpose of filing the claim application. The copy does not bear his signature. These are the rough calculations. It will not be correct to rely upon such type of the documentary evidence.

27. It appears from annexure attached to the application that he has done overtime work of 61 days till the date of retrenchment i.e. till 30-11-2000. Learned advocate appearing on behalf of the applicant brought to my notice, letter issued by the opponent on 4th of September, 1999 of which xerox copy is produced at Exb. A-7. The opponent called upon all the employees under this letter to work from 9.00 a.m. to 8.00 p.m. on all days including Sundays and holidays to finish all areas of the project (phase-I) by 31-10-1999. This letter, according to the learned advocate, supports case made out by the applicant that the applicant has done overtime work.

28. R. B. Patel who was working as Accounts Executive of the opponent and who is examined for and on behalf of the opponent at Exb. 15, denied that the applicant has done overtime work.

29. The letter which is at Exb. A-7 bears signature of four employees only out of eleven whose names are stated therein. The applicant is one of those who did not sign this letter. Therefore, it is difficult to conclude as to whether he did or did not agree to do overtime work. He is claiming that he has done overtime work, therefore, reference of xerox copies of wage register and which are for the period from July, 2000 to October, 2000 becomes inevitable. There is a column No. 10 showing "overtime" in the wage register. Name of the applicant is at Sr. No. 7. The register does not show that the applicant has done overtime work. Therefore, and relying upon decision given by the Hon'ble High Court of Gujrat in case of *Gujrat Water Supply and Sewarage Board and Anr,* referred to above, I, hold that, prior adjudication regarding claim of overtime wages of the applicant was necessary before filing of this application. I, conclude that, in absence of such adjudication, the application in hand, which is under Section 33-C(2) of the said Act, 1947 for the claim of the overtime wages is not maintainable. Resultant position is that, the application is maintainable only in respect of the claim for retrenchment compensation. I answer the issue accordingly.

30. *Issue No. 2:* The applicant in his evidence (Exb.14) claimed Rs.15,000/- towards retrenchment compensation. Section 25(F)(b) of the said Act, 1947 lays down that,—

> "No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay

(for every completed year of continuous service) or any part thereof in excess of six months."

31. The applicant was in continuous service of the opponent for a period of four years and eight months. In view of the above provision, he is entitled to retrenchment compensation equivalent to fifteen days average pay for every completed year of continuous service for a period of five years. At the time of retrenchment, his wages were Rs. 5,000/- per month. In this connection, reference of xerox copies of the wage register (Exb. O-3, colly) can be made. Learned advocate of the opponent strongly objected to take into consideration the amount of Rs. 5,000/- as monthly salary of the applicant. He pointed out that a sum of Rs. 2,500/- is paid as other allowances. This amount of Rs. 2,500/- paid as other allowances should be deducted from that of Rs. 5,000/-. If this is done, according to him, salary of the applicant comes to Rs. 2,500/- per month. It is well settled position that the salary includes other allowances also paid to the workman/employee. I, therefore, do not agree with submission raised by learned advocate of the opponent.

32. Average pay @ Rs. 5,000/- per month comes to Rs. 2,500/- per fifteen days. Retrenchment compensation @ Rs. 2,500/- of fifteen days per year comes to Rs. 12,500/- for the period of five years. I, therefore, hold that, a sum of Rs. 12,500/- was payable to the applicant as retrenchment compensation. Claim of Rs. 15,000/- made out by the opponent towards retrenchment compensation is not correct.

33. The opponent has paid Rs. 6,000/- only, as a retrenchment compensation. This amount of Rs. 6,000/- will have to be deducted from the total dues of Rs. 12,500/-. If the amount of Rs. 6,000/- is deducted from that of Rs. 12,500/-, balance remains at Rs. 6,500/-. I, therefore, hold that, a sum of Rs. 6,500/- only is due as retrenchment compensation to the applicant from the opponent. I, answer the issue accordingly.

34. *Issue No. 3 & 4:* The applicant has withdrawn the claim of gratuity amount under the application-Exb. 7 which is allowed by the then learned Presiding Officer. I, therefore, hold that, the issues do not survive.

35. *Issue No. 5:* Even though it is proved that the applicant is not entitled to bonus, it will be appropriate and better if the question regarding the amount which the applicant has claimed by way of bonus is thrashed out. He has claimed Rs. 17,500/- as bonus.

36. It is not in dispute that, bonus @ Rs. 8.33 is payable on the total salary of the year. Total salary of the applicant per year was Rs. 60,000/-. Bonus @ Rs. 8.33% on the amount of Rs. 60,000/- comes to Rs. 4,998/-. There is nothing on record to show that the opponent paid bonus except that which is under the cheque dated 30-11-2000 to the applicant. Total bonus @ Rs. 4,998/- per year comes to Rs. 24,990/- for the period of five years. Claim of Rs. 17,500/- made out by the applicant as bonus is also not correct. Since, the applicant is not entitled to claim the bonus, the question as to whether the bonus amount is due to him from the opponent, does not survive.

37. *Issue No. 6:* The applicant had no leave on his credit at the time of his retrenchment. He did not give details in his evidence also as to how he calculated the amount of Rs. 3,846/- as leave salary. Since he is not entitled to claim the leave salary, as the leave was not on his credit, at the time of his retrenchment, I, hold that, the issue as to whether the sum on account of leave salary is due to the applicant from the opponent does not survive.

38. *Issue No. 7 & 8:* While discussing the issue No. 1 have concluded that the opponent has not done overtime work. Question of awarding overtime wages on account of the claim of overtime work does not arise. I, therefore, answer the issues in negative.

39. *Issue No. 9:* The applicant succeeded in proving that a sum of Rs. 6,500/- only after deduction of Rs. 6,000/- already paid to him, by the opponent under cheque dated 30-11-2000, is due from the opponent. The claim of gratuity amount as stated earlier is withdrawn by the applicant. The applicant is not entitled to rest of the claim. I, therefore, hold that, he is entitled to receive only the balance amount of Rs. 6,500/- as retrenchment compensation. I, answer the issue accordingly.

As a result of findings given to the issue No. 9, I hold that the application will have to be partly granted. The applicant neither claimed interest on the due amount nor cost or the application. With this, I proceed to pass following order:

ORDER

1. The application partly granted.
2. The opponent do pay to the applicant, a sum or Rs. 6,500/- (Rupees Six thousand five hundred only) as balance retrenchment compensation.
3. Rest of the claim rejected.
4. No order as to costs.

Dilip K. Gaikwad,
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court-I.

Notification

No. 28/18/2007-LAB/861

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 25-5-2007 in reference No. IT/101/98 is hereby published as required by

Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 22nd August, 2007.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI

(Before Shri Dilip K. Gaikwad, Presiding Officer)

Case No. IT/101/98

Smt. Shewanti Raiu Kankonkar,
H. No. 328, Sokoilem Bhat,
Carambolim,
Ilhas, Goa. ... Workman/Party I

v/s

M/s. Bento Minguel Fenandes,
Luis de Menezes Street,
Panaji, Goa. ... Employer/Party II

Workman/Party I - represented by Adv. P. J. Kamat.

Employer/Party II- represented by Shri K. V. Nadkarni (Represented).

AWARD

(Passed on this 25th day of May, 2007)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (in short the said Act, 1947).

1. A factual matrix giving rise to the present reference, stated in narrow compass, is as follows:

2. The Government of Goa in exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the said Act, 1947 under order dated 23-11-1998 has referred to this Tribunal following dispute for adjudication–

"(1) Whether the action of the management M/s. Bento Minguel Fernandes, Panaji, Goa, in terminating the services of Smt. Shewanti Raiu Kankonkar, Sweeper, with effect from 5-3-1997, is legal and justified?

(2) If not, to what relief the workman is entitled ?"

3. In response to notices, both parties appeared in this Tribunal. Party I presented her claim statement on 4-2-1999 at Exb. 4. It appears from the claim statement that the Party II is an Industrial Establishment which is carrying on business of sale of articles and liquor etc. It is a partnership firm. The Party I was working as a Sweeper with the Party II from the month of July, 1987. Initially she was paid wages Rs. 312 per month. The wages came to be increased from time to time as per notifications issued by the Government of Goa under Minimum Wages Act, 1948. Mother of Party I, due to sudden illness, came be admitted in Bhandari hospital on 3rd March, 1997. The Party I was with her mother in the hospital. She sent message to Party II that she will not be able to attend work on 3rd and 4th March, 1997. She joined her duty on 5th March, 1997. Partner of Party II after lunch break on 5th March, 1997 told her not to attend her duty and thereby terminated her from service without any cause. She made complaint immediately on the next day that is on 6th March, 1997 to the Labour Inspector, Panaji. The Asstt. Labour Commissioner issued notices to her and also to the Party II for settlement. The dispute raised before the Asstt. Labour Commissioner could not be settled as a result failure came to be recorded. Therefore, the Government of Goa, as stated earlier, referred the dispute to this Tribunal for adjudication.

4. According to the Party I the act of Party II in terminating her service amounts to retrenchment. The Party II neither gave notice nor paid wages in lieu of notice. Not only that, retrenchment compensation as required under Section 25(F) of the said Act, 1947 is also not paid. Her termination from service is illegal and unjustified. Therefore, she has prayed for reinstatement in service with full back wages and continuity in service and with other benefits.

5. The Party II filed its written statement on 25-2-1999 at Exb. 5 and thereby combated claim made out by the Party I. The Party II has admitted that the Party I was its employee, but, it was with effect from 1-10-1989. Further, it appears from written statement that the Party II did not receive message from the Party I that the Party I was unable to attend work on 3rd and 4th March, 1997 because of her mother's illness. Inspite of several reminders the Party I did not report to her duty. She has abandoned work. There is no termination of service of the Party I. Question of notice and payment of retrenchment compensation does not arise.

6. The Party I submitted her rejoinder on 1-4-1999. The rejoinder is at Exb. 6. She has denied in seriatim all contentions which are raised by Party II in written statement and which are adverse to her. She reiterated that she is refused with employment by the Party II. There is no abandonment of work on her part. She further pointed out that she is not gainfully employed elsewhere in Goa.

7. On basis or pleadings, the then learned Presiding Officer Labour Court-I, framed issues at Exb. 7. The issues are as follows:

1. Whether the Party I proves that the Party II terminated her services w.e.f. 5-3-1997 ?

2. Whether the Party I proves that the action of the Party II in terminating her service w.e.f. 5-3-1997 is illegal and unjustified?

3. Whether the Party II proves that the Party I abandoned her services and hence there is no dispute?

4. Whether the Party I is entitled to any relief?

5. What Award?

8. My findings on the above issues are as follows:

Issue No. 1 : In affirmative.

Issue No. 2 : In affirmative.

Issue No. 3 : In negative.

Issue No. 4 : In affirmative.

Issue No. 5 : As per final order.

REASONS

9. *Issue No. 1:* The Party I examined herself at Exb. 12. It appears from her evidence that the Party II is dealing with business of selling liquor in wholesale and also of gift articles. She was working as a Sweeper with the Party II from the month of June, 1987. Her mother, due to sickness was admitted on 3rd March, 1997 in Bhandari hospital. She was with her mother. She sent message through her husband to the Party II that she will not join her duty for two days that is on 3rd and 4th March, 1997. She joined her duty on 5th March, 1997. After lunch break a person by name Victor who is one of the partners of the Party II told her not to join duty henceforth. It reveals from her evidence that the Party II terminated her services immediately after lunch break on 5th March, 1997.

10. The Party II examined Victor Fernandes on its behalf at Exb.13. He admitted that the Party I was employed as a Sweeper of the Party II, but it was w.e.f. 1-10-1989. The Party I did not report to her duty w.e.f 3rd March, 1997. The Party II sent letters and called upon the Party I to join her duty. The Party I did not comply with the letters. The Party I has abandoned her service w.e.f. 5-3-1997.

11. Xerox copy of the appointment letter is produced by the Party II at Exb. E-1. The Party II admitted in her cross examination that, original appointment letter was issued to her and that, there is her signature on xerox copy of the appointment letter. The xerox copy shows that the Party II appointed the Party I as a Cleaner (Sweeper) w.e.f. 1-10-1989. Therefore, evidence of the Party I, that she was working as Sweeper with the Party II from the month of June, 1987 is devoid of merits and same is liable to be rejected.

12. Register of employment is produced by the Party II at Exb. W-12. The Party I is shown absent w.e.f. 3rd March, 1997. Xerox copy of bill for hospitalization issued by Dr. Bhandari hospital, Panaji, Goa is at Exb. W-2. Smt. Uma Kankonkar who is mother of Party I was admitted in this hospital on 3rd March, 1997. Therefore, evidence of the Party I, that because of illness of her mother she could not come to her work on 3rd and 4th March, 1997 appears to be probable.

13. There is no signature of the Party I on 5th March, 1997 in the register of employment to support that she worked during first half on that day. Since it is the case of the Party I that the Party II terminated her services w.e.f. 5-3-1997, and since it is the defence of the Party II that the Party I abandoned her services w.e.f. this date, I hold that this date can safely be taken as the date from which the Party I is not in service with the Party II. The case made out by the Party I and the defence taken by the Party II have given rise to a crucial question as to whether there is termination of service of or abandonment of service by the Party I.

14. Xerox copy of complaint made by the Party I to Labour Inspector, Panaji, Goa is at Exb. W-3. The complaint is made immediately on the next day that is on 6-3-1997. The complaint is made stating that due to sickness of mother, the applicant could not join her duty on 3rd and 4th March, 1997, that, she reported her duty on 5th March, 1997, and that, the Party II after lunch break on 5th March, 1997 told her not to join service. On basis of this complaint Asstt. Labour Commissioner issued notices to both parties to appear on 26-3-1997 at 3.30 p.m. for settlement. Xerox copy of the notice is at Exb. W-4. The Party I under application dated 9-5-1997 by narrating all facts requested the Asstt. Labour Commissioner to admit the matter in conciliation for an early settlement of the dispute. Xerox copy of the application is at Exb. W-5.

15. It is evident that the Party II by sending letter dated 9-6-1997 informed the Asstt. Labour Commissioner, Panaji, Goa, that it did not refuse employment to the Party I, and that the Party I should report her duties immediately. Xerox copy of the letter is at Exb. W-6. There is a xerox copy of letter dated 16-6-1997 at Exb. W-7 sent by Party I to the Asstt. Labour Commissioner. The Party I informed by this letter to the Asstt. Labour Commissioner that she will immediately report to her work. She requested the Asstt. Labour Commissioner to advise the employer that is the Party II to issue attendance card as per provisions of Minimum Wages Act, 1948, and the Rules thereunder. Copy of this letter is addressed to the Party II.

16. On 17-6-1997 the Party I informed the Asstt. Labour Commissioner that she went to the employer, that is, the Party II, on 16-6-1997 at about 9.30 a.m., but the Party II did not allow her to join her duty. Xerox copy of the letter is at Exb. W-8, colly.

17. The Party II by sending another letter on 25-6-1997 informed the Party I to join her duty immediately, failing which necessary action will be taken against her. Xerox copy of the letter is at Exb. W-9. There is no documentary evidence on behalf of the Party I to show what steps were taken by her in response to this letter dated 25-6-1997.

18. Learned Advocate appearing on behalf of the Party I argued that the Party I worked as a Sweeper for about eight years before 5-3-1997. Under this circumstance, it cannot be said that the Party I suddenly decided to voluntarily abandon her service. If there was abandonment of service, it was necessary for the Party II to hold domestic inquiry. Nothing such has

been done by the Party II. There is no clinching evidence by the Party II to prove that the Party I has voluntarily abandoned her service. Therefore, in his opinion, it will have to be held that there is termination of service of the Party I by the Party II.

19. Representative of Party II in reply to the argument advanced by learned advocate of the Party I submitted that the Party I as admitted by her in cross examination, did not come to attend her duty on 5-3-1997. Question of termination of service by the Party II w.e.f. 5-3-1997 does not arise. The reference made by the Government is bad-in-law. Therefore, the Tribunal has no jurisdiction to decide as to whether service of Party I is terminated w.e.f. 5-3-1997. He relied upon decisions given by the Hon'ble High Court of Judicature, Rajasthan in case of *Suresh Chandra v/s General Manager, Rajasthan State Bridge and Construction Corporation, reported in 2002 (3) L.L.N. 1212,* and by the Hon'ble Supreme Court in case of *Pottery Mazdoor Panchayat v/s The Perfect Pottery Co. Ltd., and others,* and in *Hochtier Gammon v/s Industrial Tribunal, Bhubaneshwar, Orissa and others* which are taken out from Supreme Court Labour Journal-1950-83 Vol. 7.

20. Since submissions made by Representative of Party II that the reference made by the Government of Goa is bad-in-law and therefore this Tribunal has no jurisdiction to decide as to whether service of Party I is terminated by Party II w.e.f. 5-3-1997, goes to very root of the case, I will first deal with his submissions.

21. In case of *Suresh Chandra* the reference had been made as to whether the termination of services of the workman w.e.f. 1-3-1989 was justified. According to the workman, himself, his services stood terminated w.e.f. 1-3-1987. There was submission by learned counsel for the employer that the reference itself was bad, and that, the award was nullity. The Labour Court had concluded that though the reference was in respect of termination w.e.f. 1-3-1989 it would proceed as if the services stood terminated with effect from 1-3-1987 as per claim of the workman. The Hon'ble High Court of Rajasthan held that:

> "Labour Court lacks competence to correct, modify, amend or alter the terms of reference or correct the name or date of termination of service, etc., and in case it does so the award becomes nullity being without jurisdiction, based on bad reference.

22. The facts of the reported case are clearly distinguishable from that of the present one. The Party I has claimed that her service is terminated w.e.f. 5-3-1997. The Party II came with defence that the Party II is absent from duty from the said date. It follows that the date from which the Party I is not in service, is admitted. With respect, I am of the opinion that the decision relied upon by the Representative from *Suresh Chandra's* case is not applicable.

23. The Hon'ble Supreme Court observed in case of *Hochtier Gammon* that Jurisdiction of the Tribunal is to try an Industrial Dispute referred to it for its adjudication by appropriate Government by an order of reference passed under Section 10. It is not open to the Tribunal to travel materially beyond the terms of reference, for it is well settled that the terms of reference determine the scope of its power and jurisdiction from case to case.

24. The observation made by Hon'ble High Court in case of *Pottery Mazdoor Panchayat* decided by the Hon'ble Supreme Court and which are highlighted, speak that jurisdiction of the Tribunal in Industrial Disputes is limited to the points, specifically referred for its jurisdiction and to matters incidental thereto and that the Tribunal cannot go beyond terms of reference made to it.

25. In the present case the reference made by the Government of Goa is not bad-in-law. This Tribunal while deciding the reference is not travelling materially beyond reference. I, therefore, do not agree with submission made by Representative of Party II. The argument advanced by him is misconceived and devoid of merits.

26. Learned advocate appearing on behalf of Party I to substantiate his argument relied upon decisions from reported cases, 3 in number, which I am referring as follows:

(A) The Hon'ble High Court of Judicature at Bombay held in case of *Gangaram K. Medekar, Petitioner v/s Zenith Safe Mfg. Co. and Ors., Respondents* reported in 1996(1) C.L.R. 172 that,—

> "In cases of voluntary abandonment of service, it is a matter of intention. It depends on facts of each case. It is a matter of inference being drawn on given set of facts. The employer unilaterally cannot say that the workman is not interested in employment. It is for this reason that a domestic enquiry is required to be held. Even before the Labour Court, the employer is required to prove clearly by evidence that the workman had voluntarily abandoned his service. If the Labour Court is no evidence led by the employer and if the Labour Court finds that it is word against word, then the benefit goes to the workman and not the employer. The primary onus to lead evidence to prove voluntary abandonment of service is on the employer."

In the above reported case the petitioner was in employment of the respondent No. 1 company since 4-9-1967. The respondent No. 1 orally terminated the service on 18-4-1986. Petitioner raised Industrial Dispute and reference came to be made to Labour Court. Respondent No. 1 took up defence that it was not termination but a case of abandonment by the petitioner. Respondent No. 1 alleged that petitioner has left the work of his own. Respondent No. 1 by letter dated 26-4-1986 alleged misconduct on part of the petitioner and called upon petitioner to report for duty but the respondent did not respond. Labour Court accepted the defence and rejected the reference. The Hon'ble High Court in Writ Petition pleased to hold that this is

clearly a case of termination of service and directed reinstatement and back wages. Facts of this reported case are similar with that of the present one except that the Party II did not allege in writing misconduct on part of Party I. Decision from this reported case can safely be relied upon.

(B) In case of *Mahamadsha Ganishah Patel and Anr., Petitioner v/s Mastanbaug Consumers' Co-op. Wholesale & Retail Stores, Ltd., and Anr., Respondents* reported in 1998 1 C.L.R. 1205 the employee did not report for duty on expiry of leave. He reported for duty about month thereafter. The employer did not allow him to join duty. On a complaint of unfair labour practice, Labour Court directed reinstatement with full back wages except for six months as complaint was filed belatedly. Industrial Court confirmed the order of reinstatement, but directed 50% back wages only. In writ petitions filed by the employer and employee, the Hon'ble High Court of Judicature at Bombay pleased to hold that—

> "even in case of abandonment of service, enquiry was necessary and in the absence of the same it is held that the employer failed to establish abandonment of service and as such there was termination of service."

Facts of the above reported are different from that of the present one. Even then the decision can safely be relied upon to hold that in case of abandonment of service enquiry is necessary and if the enquiry is not held there is failure on part of the employer to establish abandonment of service and as such there is termination of service.

(C) In case of *Shripat Vishram Angre, Petitioner v/s Phoenix Mills Ltd.. & Ors., Respondents,* reported in 1993 (II) C.L.R. 518., Petitioner was employee of Respondent No. 1 Textile Mill. There was textile strike in Bombay from 18-1-1882. Petitioner did not report for work. Respondent No. 1 took it that the petitioner abandoned his service. Petitioner approached on 31-12-1983 but he was not allowed to join. Industrial Court upheld the plea of abandonment of service. High Court held that at the highest only negligence could be inferred for not reporting for work up to 31-12-1983, but it could not be said that the workman was guilty of abandonment of service.

In the present case also it is the defence of the Party II that the Party I did not report to her duty and therefore there is abandonment of service by the Party I. This fact is similar to that which is in the reported case. Decision from the above reported case is also squarely applicable to the present case.

27. The evidence referred to above clearly reveals that immediately after 5-3-1997 the Party I took possible steps for redressal of her grievances. Though there is documentary evidence in the form of letters by Party II to show that it sent letters and called upon Party I to join duty, it reveals that the same is with intention to make others to believe that the Party II never refused service to Party I. By sending letters to Labour Commissioner the Party I has informed that whenever she went the Party II did not allow her to join duty. When she has worked for about eight years with the Party II before 5-3-1997, it does not appeal to my mind that she will suddenly decide for voluntarily abandonment of service. I agree with argument advanced by learned advocate of Party I in this regard. Even assuming that there is abandonment of service by Party I, it was necessary for Party II to hold domestic enquiry against Party I. Nothing such has been done by the Party II. In absence of the enquiry it will have to be concluded that there is termination of service.

Further, there is no sufficient evidence on behalf of Party II to conclude that the Party I has voluntarily abandonment her service. In view of this position, above discussion and relying upon decisions from reported cases, alluded supra, I hold that case made out by Party I appears to be more probable, natural and convincing than the defence put forth by Party II. I therefore, answer the issue in affirmative.

28. *Issue No. 2:* Section 25F of the said Act, 1947, lays down that—

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government (for such authority as may be specified by the appropriate Government by notification in the Official Gazette).

The Party I is a workman as defined under Section 2(s) of Industrial Disputes Act, 1947. It is not in dispute that the Party II is an industry as defined under Section 2(j) of the said Act, 1947. The Party I is in continuous service for not less than one year under the employer/Party II. Termination is retrenchment as defined under Section 2(oo) of the said Act, 1947. It is proved that the Party II terminated services of the Party I. The Party II did not comply with conditions precedent to retrenchment and which are laid down by Section 25(F) of the said Act, 1947. I, therefore, hold that the termination of service of the Party I by the Party II is illegal and unjustified. My answer to the issue is in affirmative.

29. *Issue No. 3:* As stated earlier there is no sufficient and convincing evidence on behalf of the Party II to hold

that the Party I has voluntarily abandoned her services. Therefore and in view of finding given to issue No. 2, I hold that there is no abandonment of service by Party I.

There is inter se relation of employer and employee between Party II and Party I. The dispute which is between the Party I and Party II is connected with the employment or non employment of the Party I. It is the Industrial Dispute as defined under Section 2(k) of the said Act, 1947. Therefore and in view of above discussion I answer the issue in negative.

30. *Issue No. 4 :* Section 11A of the said Act, 1947, provides that—

> "Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct re-instatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

31. I am satisfied that termination of service of Party I by the Party II is not justified. I, therefore, hold that the Party I is entitled to reinstatement with full back wages and continuity of services and all consequential benefits thereto. My answer to the issue is in affirmative.

As a result of the finding given to the issue No. 4, I hold that the action of the management i.e. of the Party II, in terminating service of Party I will have to be declared as illegal and unjustified, and further, the Party II will have to be directed to reinstate the Party I in service with full back wages and continuity in service and all consequential benefits thereto. With this, I proceed to pass following order:

ORDER

1. The reference is adjudicated as follows:

   (A) It is hereby declared that the action of the management of M/s. Bento Minguel Fernandes that is of the Party II, in terminating the service of Party I, Smt. Shewanti Raiu Kankonkar, Sweeper, w.e.f. 5-3-1997, is illegal and unjustified.

   (B) The Party II is directed to reinstate the Party I in the service with full back wages and continuity in service and all other consequential benefits thereto.

2. Award be sent to the Government of Goa as per provision contained in Section 15 of the Industrial Disputes Act, 1947.

Dilip K. Gaikwad,
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court-I.

Notification

No. 28/18/2007-LAB/862

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 17-7-2007 in reference No. LCC/58/2002 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 22nd August, 2007.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI

(Before Dilip K. Gaikwad, Hon'ble Presiding Officer)

Case No. LCC/58/2002

Mohamed Hafiz B. Malik,
H. No. 1012/38,
Goa Police Co-operative Housing Society,
Alto-Porvorim, Goa. ... Applicant

v/s

M/s. Kadamba Transport Corporation Ltd.,
East Wing Bus Terminus,
Panaji, Goa. ... Opponent

Applicant - Represented by Adv. A. Kundaikar.

Opponent - Represented by A. S. Shirvoikar (Representative).

JUDGEMENT

(Delivered on this 17th day of July, 2007)

This is an application instituted under Section 33 C(2) of the Industrial Disputes Act, 1947 (in short hereinafter referred to as the said Act, 1947) to recover dues of medical expenses.

1. Facts giving rise to the present application, stated in brief, are as follows:

The applicant is working as Senior Security Assistant at Porvorim depot of the opponent which is running transport business within and outside the State of Goa.

The applicant has a daughter by name Miss Hazira Malik. She had sustained serious burn injuries. Therefore she was admitted in Goa Medical College Hospital. It reveals that the applicant spent Rs. 5,986/- for her medical treatment. By letter dated 18-7-2001 the applicant submitted to the opponent, the medical bill for reimbursement. The opponent failed and neglected to make reimbursement of the medical bill. Therefore the applicant by filing this application on 7-6-2002 has prayed for direction to the opponent to pay the amount of Rs. 5,986/- with interest @ 12% p.a. from the date on which this amount became due, till its realization.

2. The opponent resisted the claim by filing its written statement at Exb. 4 on 26-7-2002. It appears from written statement that the opponent is a company registered under Indian Companies Act, 1956. The opponent is carrying on transport business within and outside the State of Goa. All employees of the opponent are governed by Certified Standing Orders framed by it. Medical Reimbursement Scheme introduced by the opponent for its employees is kept in abeyance due to final crisis. Therefore, the opponent has requested to dismiss the application with cost.

3. On basis of pleadings of both parties, the then learned Presiding Officer framed issues on 25-9-2002 at Exb. 5. The issues are as follows:—

(1) Whether the applicant proves that he is entitled to receive Rs. 5,986/- from the opponent under the medical reimbursement scheme?

(2) Whether the opponent proves that the claim of the applicant is liable to be dismissed because the Medical Reimbursement Scheme is kept in abeyance due to financial difficulties?

(3) Whether the applicant is entitled to any relief?

(4) What order.

4. My findings on the above issues are as follows:

Issue No. 1: Entitled to reimbursement to the extent of Rs. 1,000/- only.

Issue No. 2: In negative.

Issue No. 3: Entitled to medical reimbursement to the extent of Rs. 1,000/- only.

Issue No. 4: As per final order.

REASONS

5. *Issue No. 1:* The opponent is a Government company registered under Indian Companies Act, 1956. It is carrying on transport business within and outside State of Goa. It has appointed various categories of employees including drivers, conductors and mechanics etc. to carry out its functions. All the employees are governed by its Certified Standing Orders.

6. The applicant is working as a Senior Security Assistant in Porvorim depot owned by the opponent. He has a daughter by name Miss Hazira Malik. His evidence is at Exb. 7. It appears from his evidence that his daughter had sustained serious burn injuries. Therefore she was admitted in Goa Medical College Hospital. He spent Rs. 5,986/- for her medical treatment. By letter dated 29-11-2000 he submitted to the opponent, medical bill amounting to Rs. 5,986/- for reimbursement. The opponent under its letter dated 13-3-2001 informed him that Medical Reimbursement Scheme introduced by it is kept in abeyance, and therefore, he is not entitled to medical reimbursement.

7. The applicant in support of his claim has produced xerox copies of the application dated 29-11-2000, of application for claiming refund of medical expenses and of certificate 'B' at Exb. A-2, colly. In addition, he has produced discharged card issued by Goa Medical College Hospital, Department of Surgery, at Exb. A-3.

8. Discharge card issued by Goa Medical College Hospital, Department of Surgery (Exb. A-3.) clearly supports that, Miss Hazira Malik, aged twenty-one years, who is daughter of the applicant, was admitted in this hospital because of burn injuries. Xerox copy of the letter dated 29-11-2000 coupled with xerox copies of application for claiming refund of medical expenses and of certificate 'B' further supports that the applicant submitted to the opponent medical bill amounting to Rs. 5,986/- for reimbursement. The opponent by its letter dated 13-3-2001 informed the applicant that the medical reimbursement scheme introduced by it is kept in abeyance and hence his request for medical reimbursement at this stage cannot be granted. The letter is at Exb. A-4.

9. The opponent examined its legal Assistant Vidhyadar on its behalf at Exb. 8. He admitted that medical bill amounting to Rs. 5,986/- was submitted by the applicant to the opponent for reimbursement. According to him, the employees of the opponent are eligible for medical reimbursement under Medical Reimbursement Scheme introduced by the opponent. The Scheme is kept in abeyance by the opponent and therefore, the applicant is not entitled for medical reimbursement.

10. Xerox copy of Kadamba Transport Corporation Ltd., Employees Medical Reimbursement Rules is at Exb. O-1. Rule 3 (d) defines that "family" shall mean his/ /her spouse and maximum three dependents who are residing with employee and dependent on the employee. The applicant did not disclose either in the application or in the evidence that his daughter Miss Hazira Malik is one of the maximum three dependent residing with him. The opponent also did not raise dispute in this regard.

11. Rule 5 of the said Rules provides that all the categories of staff irrespective of basic pay range are entitled to maximum reimbursement up to Rs. 600/- per annum on medical expenditure. In addition, as per rule 6 of the said Rules, additional benefit of medical

reimbursement of medical expenses to the extent of Rs. 1,000/- per annum for hospitalization, accident and other special cases, subject to production of such bills is available to the employee covered by Rule 3(d) of the said Rules.

12. Rule 8 of the said Rules further makes it clear that, these Rules shall not be applicable to those employees covered under Employees' State Insurance Corporation Scheme (ESICS).

13. The applicant has claimed reimbursement of the medical bill amounting to Rs. 5,986/- alleged to have been spent by him for medical treatment of his daughter Miss Hazira Malik. So it is his primary duty to prove that he has spent Rs. 5,986/- for medical treatment of his daughter. There are rough details in handwriting on back side of the letter dated 29-11-2000 (Exb. A-2 colly) which show that the total expenditure is Rs. 5,986/-. This figure is also appearing in xerox copy of form of application for claiming refund of medical expenses. Xerox copy of certificate 'B' further shows that a sum of Rs. 1,796.48 ps. is spent to purchase medicines for the applicant's daughter Miss Hazira Malik. There is no documentary evidence in the form of medical receipts or vouchers to support that the applicant has spent Rs. 5,986/- for medical treatment of his daughter as rightly pointed out in written notes of argument (Exb. 11) submitted on behalf of the opponent. I, therefore, hold that claim made out by the applicant that he spent Rs. 5,986/- for medical treatment of his daughter must fail.

14. The certificate 'B' appears to have been issued by the assistant Professor, Surgery Department of the Goa Medical College Hospital. Relying upon this certificate I hold that the applicant has spent Rs. 1,796.48 ps. on medical treatment of his daughter.

15. Now I switch over to remaining part of the issue and that part is whether the applicant is entitled to reimbursement of the medical bill amounting to Rs. 1,796.48 ps. Learned advocate of the applicant argued that all the employees including the applicant are governed by the Medical Reimbursement Scheme introduced by the opponent. The applicant is not covered by the provisions of Employees' State Insurance Corporation Scheme (ESIC). Therefore, according to him, the applicant is entitled to the medical reimbursement.

16. It appears from written notes of argument (Exb. 11) submitted on behalf of the opponent that the applicant is governed by the ESICS. Therefore, he is not entitled for medical reimbursement.

17. Gross salary of the applicant for the month of September, 2001 was Rs. 7,903/-. His basic pay was Rs. 4,700/-. This fact becomes clear from his pay slip produced at Exb. A-1. The Board of the opponent by passing resolution No. 723, made applicable to its officers drawing the pay scale of Rs. 1,640-2,900, existing rules, regulations, notifications, orders applicable to the officers of the Government of Goa except General Provident Fund Rules, Central Government Employees' Group Insurance Scheme 1980, Superannuation Pension, Payment of Bonus, Family Pension and Medical Reimbursement for treatment as Out Patient Department. Xerox copy of the resolution is at Exb. O-2. Daughter of the applicant was admitted in the hospital. Therefore it can safely be said that she was indoor patient. The resolution No. 723 referred to above and which makes reference of the medical reimbursement for treatment as out patient department is not applicable to the present case. The opponent is not entitled to take benefit of this resolution.

18. It has come in evidence of Harmalkar who is examined on behalf of the opponent that the applicant had paid 4% of the basic wages to those employees who are not covered under the ESIC Scheme. Xerox copy of resolution No. 715 shows that proposal to pay medical allowance to the employees of the corporation who are not covered by the ESIC Scheme @ Rs. 4% of the wages be and is hereby approved. It appears from written notes of argument submitted on behalf of the opponent that the applicant is governed by the ESIC Scheme, and therefore, he is not entitled to medical reimbursement. There is no cogent evidence on behalf of the opponent in this regard. On the contrary it is admitted by the witness Harmalkar in his cross examination that a person who is drawing a basic pay of Rs. 5,000/- is exempted from ESIC Scheme and that such person is covered by the Medical Reimbursement Rules framed by the opponent. On basis of these admission also it can safely be said that the applicant who was drawing basic pay of Rs. 4,700/- per month at the relevant time was not governed by ESIC Scheme.

19. The opponent rejected the applicant's claim for medical reimbursement under its letter dated 13-3-2001 (Exb. A-4) only on the ground that, Medical Reimbursement Scheme is kept in abeyance. This letter does not make reference that the applicant is governed by the ESIC Scheme, and therefore, he is not entitled to the Medical Reimbursement Scheme. The is no such specific pleading also in the written statement. The contention raised in written notes of argument submitted on behalf of the opponent that the applicant is governed by ESIC Scheme and therefore he is not entitled to the medical reimbursement is afterthought. The resolution No. 715 of which xerox copy is produced at Exb. O-3 and which is relied upon by the opponent, is in respect of the medical allowance and not in respect of the medical reimbursement. Medical allowance and medical reimbursement are different from each other. The opponent is not entitled to take recourse of this resolution to show that the applicant is governed by the ESIC Scheme and therefore he is not entitled to medical reimbursement.

20. The applicant being employee of the opponent is governed by the Medical Reimbursement Rules

framed by it and of which reference is made earlier. Cumulative effect of the Rules 5 and 6 is that the employee governed by these Rules is entitled to the maximum medical reimbursement Rs. 600/- per annum, and in addition, to the benefit of reimbursement to the extent of Rs. 1,000/- per annum, subject to production of bills, coming to total of Rs. 1,600/- per annum. In other words the employee is not entitled to total medical reimbursement of more than Rs. 1,600/- per annum. In the present case it is proved that the applicant has spent Rs.1,796.48 ps. for medical treatment of his daughter.

21. By Circular dated 22-11-1990 of which xerox copy is produced at Exb. O-4 implementation of the Rule 6 is kept in abeyance. The circular further speaks that monthly medical allowance under Rule 5 shall continue to be paid as usual. It is not the case of the applicant that he is not paid monthly medical allowance which was payable to him under Rule 5. Claim for reimbursement of the medical bills in dispute comes under the Rule 6. I, therefore, hold that he is entitled to the reimbursement to the extent of Rs. 1,000/- only, under Rule 6. I answer the issue accordingly.

22. *Issue No. 2 :* The opponent in para No. 3 of its written statement raised specific plea that the Medical Reimbursement Scheme is kept in abeyance, and therefore, claim of the applicant is liable to be dismissed. The letter dated 13-3-2001 produced at Exb. A-4 does not set out reason for keeping the Medical Reimbursement Scheme in abeyance. Xerox copy of Circular dated 22-11-1990 (Exb. O-4) discloses that Rules of the Medical Reimbursement are being revised. Therefore Clause 6 of the said Rules is kept in abeyance pending revision of the Rules and the final approval. The Circular appears to have been issued under signature of the Managing Director. It is made clear in this circular that the monthly medical allowance under Rule 5 shall continue to be paid as usual.

23. The said Rule 5 is in respect of maximum medical reimbursement to the extent of Rs. 600/- per annum to all categories of the staff respective of basic pay range. What is kept in abeyance is implementation of Rule 6 which gives additional benefit of medical reimbursement to the extent of Rs. 1,000/- per annum, for hospitalization, operation, accident and other special cases and circumstances subject to the production of bills. Rules are framed by Board of the opponent. It is not known as to whether the Managing Director was authorized to issue such Circular dated 22-11-1990.

24. The applicant has claimed reimbursement of the medical expenses which are incurred by him on account of medical treatment extended to his daughter in the Goa Medical College Hospital. Even though implementation of this rule is kept in abeyance for limited purpose it does not necessarily mean that the applicant is not entitled to claim reimbursement of the medical bill under Rule 6. I, therefore, answer the issue in negative.

25. *Issue No. 3 :* As a result of findings given to the issue Nos. 1 and 2, I hold that the applicant is entitled to reimbursement of the medical bill to the extent of Rs. 1,000/-. So far prayer of the applicant for interest is concerned, it is necessary to reiterate that the application is under Section 33 C(2) of the said Act, 1947. Learned advocate of the applicant did not point out specific provision where-under Industrial Tribunal-cum-Labour Court can award interest in such application. The application under Section 33 C(2) of the said Act, 1947 is in the nature of execution proceeding. It will not be proper and correct to award interest on the claim made out under such application. I, therefore, hold that the applicant is not entitled to interest. The application will have to be partly granted and that too only in respect of reimbursement of the medical claim to the extent of Rs. 1,000/-. With this, I pass following order.

ORDER

1. The application partly granted.
2. The opponent do pay to the applicant, Rs. 1,000/- (Rupees One thousand only) towards reimbursement of the medical bill.
3. The opponent do pay to the applicant, cost of this application and do bear its own.

Sd/-
(Dilip K. Gaikwad),
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court-I.

Notification

No. 28/18/2007-LAB/791

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa, on 14-8-2007 in reference No. IT/63/2003 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 10th September, 2007.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI

(Before Dilip K. Gaikwad, Presiding Officer)

Case No. IT/63/2003

Mrs. Roshan Vaigankar,
H. No. 222, Oxel Bhatty,
Siolim, Bardez, Goa, and
three others. ... Workman/Party I

v/s

M/s. Gregory & Nicholas,
377/2, Bouqueachi Arrady,
Parra, Bardez, Goa. ... Employer/Party II

Workman/Party I is represented by Adv. C. J. Mane.

Employer/Party II is represented by Adv. V. Menezes.

AWARD

(Passed on this 14th day of August, 2007)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

1. Facts of present reference, stated in brief, are as follows:

The Government of Goa in exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947, under order dated 9-9-2003, has referred to this Industrial Tribunal following dispute for adjudication:

(i) Whether (1) Mrs. Roshan Vaigankar, Asstt. Storekeeper, (2) Shri Pratap Mapari, Despatch Assistant, (3) Renita Fernandes, Packing Supervisor, (4) Shri Rajesh Vaigankar, Production Supervisor, can be construed as 'Workman' as per clause (s) of Section 2 of the Industrial Disputes Act, 1947?

(ii) If the answer to the issue No. (1) above is in the affirmative then, whether the action of the management of M/s. Gregory & Nicholas, Parra, Bardez, Goa, in terminating the services of (1) Mrs. Roshan Vaigankar, (2) Shri Pratap Mapari, (3) Renita Fernandes and, (4) Rajesh Vaigankar, with effect from 22-2-2003 is legal and justified?

(iii) If the answer to issue No. (2) above is in the negative, then what relief the workmen are entitled to?

2. In response to notices, both parties put their appearance in this Industrial Tribunal. The workmen (Party I) presented their claim statement on 17-11-2003 at Exb. 4. The Party II filed its Written Statement on 7-1-2004 at Exb. 6. On basis of pleadings, the then learned Presiding Officer framed issues, five in number, at Exb. 7. The Party I examined workman number 4 Rajesh Vaingankar at Exb. 8.

3. Today, by taking the reference on board, both parties filed terms of settlement stating that each of the workmen has accepted Rs. 2,000/- from the Party II in full and final settlement of the claim, that, the workmen do not have any claim or demand or dispute against the Party II, and that, the dispute is settled.

4. The terms of settlement are signed by all the workmen, four in number, by the Party II and by their respective learned advocates, and same are taken on record (Exb.10). Since the dispute which is referred to this Industrial Tribunal for adjudication, is settled by both parties under terms of the settlement, I hold that, the dispute does not survive. With this, I proceed to adjudicate the dispute by passing order as follows:-

ORDER

1. The dispute as to whether (1) Mrs. Roshan Vaigankar, Asstt. Store-keeper, (2) Shri Pratap Mapari, Despatch Assistant, (3) Renita Fernandes, Packing Supervisor, (4) Shri Rajesh Vaigankar, Production Supervisor, can be construed as 'Workman' as per clause (s) of Section 2 of the Industrial Disputes Act, 1947, does not survive.

2. The dispute as to whether the action of the management of M/s. Gregory & Nicholas, Parra, Bardez, Goa, in terminating the services of (1) Mrs. Roshan Vaigankar, (2) Shri Pratap Mapari, (3) Renita Fernandes and (4) Rajesh Vaigankar, with effect from 22-2-2003 is legal and justified, dose not survive.

3. The dispute as to whether the workmen are entitled to relief, does not survive.

4. No order as to costs.

5. The Award be submitted to the Government of Goa as per provisions contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-
Dilip K. Gaikwad
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court-I

Notification

No. 28/18/2007-LAB/792

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa, on 29-8-2007 in reference No. IT/31/2002 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 10th September, 2007.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI

(Before Dilip K. Gaikwad, Presiding Officer)

Ref. IT/31/2004

Shri Gurunath S. Shetty,
Near Kamat Nursing Home,
Durga Bhatt,
Ponda-Goa. ... Workman/Party I

v/s

M/s. Jalaram Enterprises,
Dhavali,
Ponda-Goa. ... Employer/Party II

Workman/Party I represented by Adv. L .V. Palekar.

Employer/Party II represented by Adv. K. L. Gaonkar.

AWARD

(Passed on this 29th day of August, 2007)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

Facts of the reference stated in brief are as follows:

1. The Government of Goa in exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947, under order dated 11-8-2004, has referred to this Industrial Tribunal following dispute for adjudication.

1. Whether the action of the management of M/s. Jalaram Enterprises, Dhavali, Ponda-Goa, in refusing employment to Shri Gurunath S. Shetty, Driver, w. e. f. 10-6-2003 is legal and justified?

2. If not, to what relief the workman is entitled?

2. In response to notices, both parties put their appearance in this Industrial Tribunal. The Party I presented his claim statement on 8-10-2004 at Exb. 4. Party II filed its written statement on 18-11-2004 at Exb. 5. Party I submitted his Rejoinder on 9-12-2004 at Exb. 6. The reference is on the stage of framing of the issues.

3. Today, both parties filed terms of settlement at Exb. 9. The Party I, his learned Advocate and learned Advocate of the Party II are present before this Tribunal. The Party I and both learned Advocates admitted the terms of settlement as correct. The terms of settlement are taken on record.

4. It appears from the terms of settlement (Exb. 9) that the Party I has accepted from Party II, a sum of Rs. 1,25,000/- in cash on 20-8-2007 towards full and final settlement towards the claim made out by the Party I, and that, the dispute between the two has been amicably settled.

5. Since both the parties have amicably settled the dispute, and that the Party I has no claim of whatsoever nature against the Party II, I hold that the dispute referred by the Government of Goa as stated earlier, does not survive. With this, I proceed to pass following order:-

ORDER

1. The dispute as to whether the action of the management of M/s. Jalaram Enterprises, Dhavali, Ponda-Goa, in refusing employment to Shri Gurunath S. Shetty (Party I), Driver, w. e. f. 10-6-2003 is legal and justified, does not survive.

2. The dispute as to whether, to what relief the workman is entitled, does not survive.

3. No order as to costs.

4. The Award be submitted to the Government of Goa as per provision contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-
(Dilip K. Gaikwad),
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court-I.

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